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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,597	08/01/2003	Robert C. Frelander	CDM/3772.9999	4323

7590 12/15/2005

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EXAMINER
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LHYMN, EUGENE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/632,597	<b>Applicant(s)</b> FREELANDER, ROBERT C.	
	<b>Examiner</b> Eugene Lhymn	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.  
4a) Of the above claim(s) 9-11 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/1/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

- a. Fig. 2, side elements integral with top and bottom elements
- b. Fig. 4, side elements detachable with top and bottom elements

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Art Unit: 3727

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Chuck McClung on 12/2/05, a provisional election was made without traverse to prosecute the invention of Fig. 2, claims 1-7 and 12-16. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-11 and 17-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4, 6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Panknin (US 3333722). With respect to claim 1, Panknin discloses the following:

- A rectangular top element having four corners (Fig. 1)

Art Unit: 3727

- Side elements, one of which extends downwardly and inwardly from each corner of the top frame element (Fig. 1, item 28)
- A rectangular bottom element attached to the side elements (Fig. 1)
- Side elements angled inwardly such that the bottom element of one bin fits snugly into the top element of another bin (Fig. 1, item 28)

With respect to claim 2, Panknin discloses the top element having an upper and lower surface, including a corner element extending across each corner of the top element adjacent the lower surface, as shown in Fig. 1, item 36.

With respect to claim 4, Panknin discloses the top, bottom, and side elements being made from rigid wire (Col. 1, Lines 69-71).

With respect to claim 6, Panknin discloses the side elements being attached to the top and bottom elements via welding (Col. 2, Lines 30-34).

With respect to claim 8, Panknin discloses the wire being circular in cross-section (Fig. 2).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3727

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Panknin in view of Gold (US 3785725). With respect to claim 3, Panknin discloses the claimed invention except for the bin including a fabric cover extending across the bottom element and between the side elements. However, Gold teaches a stackable wire bin having a fabric cover extending across the bottom element and between the side elements, as shown in Fig. 1. Having a fabric cover provides additional protection to items stored within the bin. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a fabric cover to the bottom and sides of the bin of Panknin as taught by Gold so as to provide additional protection to items stored within the bin.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Panknin in view of Averill (US 2923428). With respect to claim 5, Panknin discloses the claimed invention except for the bin including a U-shaped handle extending outwardly from opposed sides of the top element. However, Averill teaches a stackable bin having U-shaped handles extending outwardly from opposed sides of the top element, as shown in Fig. 1. Having handles provides a convenient means for carrying the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add U-shaped handles to the bin of Panknin as taught by Averill so as to provide a convenient means for carrying the container.

Art Unit: 3727

6. Claims 7, 12, 13, and 16 are rejected under 35 U.S.C. 103(a) as being obvious over Panknin. With respect to claim 7, Panknin discloses the claimed invention except for the top extremities being offset from the bottom extremities by a distance equal to the thickness of the wire. It would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the top extremities to be offset from the bottom extremities by a distance equal to the thickness of the wire, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 12, Panknin discloses the claimed invention except for the length of the top element being greater than the bottom element width by an amount equal to approximately twice the thickness of the wire. It would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the length of the top element to be greater than the bottom element width by an amount equal to approximately twice the thickness of the wire, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 13, Panknin discloses the bin having corner elements formed from rigid wire (Fig. 1, item 36).

With respect to claim 16, Panknin discloses the legs being formed from rigid wire and being fixedly attached to the top and bottom elements (Fig. 1).

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Panknin as applied to claim 12 above, and further in view of Gold. With respect to claim 14, Panknin discloses the claimed invention except for the bin including a fabric cover extending across the bottom and between the sides. However, Gold teaches a stackable wire bin having a fabric cover extending across the bottom element and between the side elements, as shown in Fig. 1. Having a fabric cover provides additional protection to items stored within the bin. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a fabric cover to the bottom and sides of the bin of Panknin as taught by Gold so as to provide additional protection to items stored within the bin.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Panknin as applied to claim 12 above, and further in view of Averill. With respect to claim 15, Panknin discloses the claimed invention except for the bin including a U-shaped handle extending outwardly from opposed sides of the top element. However, Averill teaches a stackable bin having U-shaped handles extending outwardly from opposed sides of the top element, as shown in Fig. 1. Having handles provides a convenient means for carrying the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add U-shaped handles to the bin of Panknin as taught by Averill so as to provide a convenient means for carrying the container.

### ***Conclusion***



Art Unit: 3727

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sloane (US 2529267)

Averill (US 3022900)

Chap (US 4848620)

Chiang (US 6401950 B1)

Silverman (US 4244410)

Schray (US 3272377)

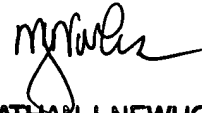
Macomber (US 1690418)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWThF 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**NATHAN J. NEWHOUSE**  
**SUPERVISORY PATENT EXAMINER**